



General Assembly

January Session, 2001

Raised Bill No. 1322

LCO No. 4376

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING THE MERGER OF DISSIMILAR BUSINESS ENTITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 33-815 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) As used in this section and sections 33-816 to 33-821, inclusive, as
4 amended by this act, (1) "other business entity" means any association
5 or legal entity, other than a domestic or foreign corporation, organized
6 to conduct business including, but not limited to, limited partnerships,
7 general partnerships, limited liability partnerships, limited liability
8 companies, joint ventures, joint stock companies and statutory trusts,
9 and (2) "interest or interests" means a beneficial ownership interest in
10 any other business entity.

11 [(a)] (b) One or more corporations may merge [into another
12 corporation] with or into any one or more corporations or any one or
13 more other business entities formed or organized under the laws of
14 this state or any other state or any foreign country or other foreign
15 jurisdiction or any combination thereof if the board of directors of each

16 corporation that is a proposed party to the merger adopts and its
17 shareholders, if required by section 33-817, as amended by this act,
18 approve a plan of merger.

19 [(b)] (c) The plan of merger shall set forth: (1) The name of each
20 corporation and other business entity planning to merge and the name
21 of the surviving corporation or other business entity into which each
22 other corporation or other business entity plans to merge; (2) the terms
23 and conditions of the merger; and (3) the manner and basis of
24 converting the shares [of each corporation] or interests of each party to
25 the merger into shares [,] or interests or obligations or other securities
26 of the surviving [or any other corporation or into cash] entity or into
27 cash or other property in whole or part.

28 [(c)] (d) The plan of merger may set forth: (1) Amendments to the
29 certificate of incorporation of the surviving corporation or the
30 governance documents of the surviving other business entity; and (2)
31 other provisions relating to the merger as are necessary or desirable.

32 (e) If the merger involves any other business entity, a written plan
33 that meets the requirements of the statutory authority for merger of
34 such other business entity shall be deemed to meet the requirements of
35 a plan of merger under this section.

36 Sec. 2. Section 33-816 of the general statutes is repealed and the
37 following is substituted in lieu thereof:

38 (a) A corporation may acquire all of the outstanding shares of one or
39 more classes or series of another corporation or some or all of the
40 interests of any other business entity if the board of directors of each
41 corporation adopts and its shareholders, if required by section 33-817,
42 as amended by this act, approve the exchange.

43 (b) The plan of exchange shall set forth: (1) The name of the
44 corporation or other business entity whose shares or interests will be
45 acquired and the name of the acquiring corporation or other business

46 entity; (2) the terms and conditions of the exchange; (3) the manner
47 and basis of exchanging the shares or interests to be acquired for
48 shares, obligations or other securities of the acquiring or any other
49 corporation or other business entity or for cash or other property in
50 whole or part.

51 (c) The plan of exchange may set forth other provisions relating to
52 the exchange.

53 (d) This section does not limit the power of a corporation to acquire
54 all or part of the shares of one or more classes or series of another
55 corporation or the interest or interests of any other business entity
56 through a voluntary exchange or otherwise.

57 (e) If the plan of exchange involves any other business entity, a
58 written plan that meets the requirements of the statutory authority of
59 share or interest exchange for such other business entity shall be
60 deemed to meet the requirements of a plan of exchange under this
61 section.

62 Sec. 3. Section 33-817 of the general statutes is repealed and the
63 following is substituted in lieu thereof:

64 (a) After adopting a plan of merger or share or interest exchange,
65 the board of directors of each corporation party to the merger, and the
66 board of directors of the corporation whose shares will be acquired in
67 the share or interest exchange, shall submit the plan of merger, except
68 as provided in subsection (g) of this section, or share or interest
69 exchange for approval by its shareholders.

70 (b) For a plan of merger or share or interest exchange to be
71 approved: (1) The board of directors must recommend the plan of
72 merger or share or interest exchange to the shareholders, unless the
73 board of directors determines that because of conflict of interest or
74 other special circumstances it should make no recommendation and
75 communicates the basis for its determination to the shareholders with

76 the plan; and (2) the shareholders entitled to vote must approve the
77 plan.

78 (c) The board of directors may condition its submission of the
79 proposed merger or share or interest exchange on any basis.

80 (d) The corporation shall notify each shareholder, whether or not
81 entitled to vote, of the proposed shareholders' meeting in accordance
82 with section 33-699. The notice must also state that the purpose, or one
83 of the purposes, of the meeting is to consider the plan of merger or
84 share or interest exchange and contain or be accompanied by a copy or
85 summary of the plan.

86 (e) Unless sections 33-600 to 33-998, inclusive, the certificate of
87 incorporation or the board of directors acting pursuant to subsection
88 (c) of this section requires a greater vote or a vote by voting groups,
89 and except as provided in subsection (j) of this section, the plan of
90 merger or share or interest exchange to be authorized must be
91 approved by each voting group entitled to vote separately on the plan
92 by a majority of all of the votes entitled to be cast on the plan by that
93 voting group.

94 (f) Separate voting by voting groups is required: (1) On a plan of
95 merger if the plan contains a provision that, if contained in a proposed
96 amendment to the certificate of incorporation, would require action by
97 one or more separate voting groups on the proposed amendment
98 under section 33-798; (2) on a plan of share or interest exchange by
99 each class or series of shares included in the exchange, with each class
100 or series constituting a separate voting group.

101 (g) Action by the shareholders of the surviving corporation on a
102 plan of merger is not required if: (1) The certificate of incorporation of
103 the surviving corporation will not differ, except for amendments
104 enumerated in section 33-796, from its certificate of incorporation
105 before the merger; (2) each shareholder of the surviving corporation
106 whose shares were outstanding immediately before the effective date

107 of the merger will hold the same number of shares, with identical
108 designations, preferences, limitations and relative rights, immediately
109 after; (3) the number of voting shares outstanding immediately after
110 the merger, plus the number of voting shares issuable as a result of the
111 merger, either by the conversion of securities issued pursuant to the
112 merger or the exercise of rights and warrants issued pursuant to the
113 merger, will not exceed by more than twenty per cent the total number
114 of voting shares of the surviving corporation outstanding immediately
115 before the merger; and (4) the number of participating shares
116 outstanding immediately after the merger, plus the number of
117 participating shares issuable as a result of the merger, either by the
118 conversion of securities issued pursuant to the merger or the exercise
119 of rights and warrants issued pursuant to the merger, will not exceed
120 by more than twenty per cent the total number of participating shares
121 outstanding immediately before the merger.

122 (h) As used in subsection (g) of this section: (1) "Participating
123 shares" means shares that entitle their holders to participate without
124 limitation in distributions; and (2) "voting shares" means shares that
125 entitle their holders to vote unconditionally in elections of directors.

126 (i) After a merger or share or interest exchange is authorized, and at
127 any time before the certificate of merger or share or interest exchange
128 is filed, the planned merger or share or interest exchange may be
129 abandoned, subject to any contractual rights, without further
130 shareholder action, in accordance with the procedure set forth in the
131 plan of merger or share or interest exchange or, if none is set forth, in
132 the manner determined by the board of directors.

133 (j) Notwithstanding any provision of subsection (e) of this section to
134 the contrary, a plan of merger or share or interest exchange of a
135 corporation which was incorporated under the laws of this state,
136 whether under chapter 599 of the general statutes, revised to January 1,
137 1995, or any other general law or special act, prior to January 1, 1997, to
138 be authorized by such corporation, shall be approved by (1) the

139 affirmative vote of at least two-thirds of the voting power of each
140 voting group entitled to vote thereon unless the certificate of
141 incorporation expressly provides otherwise, provided if such
142 corporation is the surviving corporation of such merger and such plan
143 of merger will not effect any change in or amendment to the certificate
144 of incorporation of such corporation and the shares to be issued under
145 the plan of merger could have been issued by the board of directors of
146 such corporation without further authorization of the shareholders of
147 such corporation, then the provisions of this subdivision shall not
148 require approval of such plan of merger or share or interest exchange
149 by the corporation's shareholders, and (2) the affirmative vote of at
150 least two-thirds of the voting power of each class of stock of such
151 corporation outstanding prior to January 1, 1997, and not otherwise
152 entitled to vote thereon, unless the certificate of incorporation
153 expressly provides otherwise; provided if such corporation is the
154 surviving corporation of such merger and such plan of merger or share
155 or interest exchange does not contain any provisions which, if
156 contained in a proposed amendment to the certificate of incorporation
157 of such corporation, would entitle any class or series of shareholders of
158 such surviving corporation to vote as a class or series as provided in
159 subsection (f) of section 33-797 or section 33-798, then the provisions of
160 this subdivision shall not require approval of such plan of merger or
161 share or interest exchange by the holders of such class or series not
162 otherwise entitled to vote thereon.

163 Sec. 4. Section 33-819 of the general statutes is repealed and the
164 following is substituted in lieu thereof:

165 (a) After a plan of merger or share or interest exchange is approved
166 by the shareholders, or adopted by the board of directors if
167 shareholder approval is not required, the surviving or acquiring
168 corporation or other business entity surviving or resulting from the
169 merger or share or interest exchange shall deliver to the Secretary of
170 the State for filing a certificate of merger or share or interest exchange
171 setting forth, in addition to the statutory requirements for a certificate

172 of merger or consolidation for any other business entity that is a party
173 to the merger: (1) The plan of merger or share or interest exchange; (2)
174 if shareholder approval was not required, a statement to that effect; (3)
175 if approval of the shareholders of one or more corporations party to
176 the merger or share exchange was required: (A) The designation,
177 number of outstanding shares and number of votes entitled to be cast
178 by each voting group entitled to vote separately on the plan as to each
179 corporation; and (B) either the total number of votes cast for and
180 against the plan by each voting group entitled to vote separately on the
181 plan or the total number of undisputed votes cast for the plan
182 separately by each voting group and a statement that the number cast
183 for the plan by each voting group was sufficient for approval by that
184 voting group.

185 (b) A merger or share or interest exchange takes effect upon the
186 [effective date of the certificate of merger or share exchange] latest to
187 occur of (1) the approval of the plan of merger or share or interest
188 exchange by all parties to the merger, (2) the filing of the certificate of
189 merger or share or interest exchange, or (3) the effective date of the
190 merger or share or interest exchange as set forth in the certificate of
191 merger or share or interest exchange.

192 Sec. 5. Section 33-820 of the general statutes is repealed and the
193 following is substituted in lieu thereof:

194 (a) When a merger takes effect:

195 (1) Every other corporation or other business entity party to the
196 merger merges into the surviving corporation or other business entity
197 and the separate existence of every corporation or other business entity
198 except the surviving corporation or other business entity ceases;

199 (2) The title to all real estate and other property owned by each
200 corporation or other business entity party to the merger is vested in the
201 surviving corporation or other business entity without reversion or
202 impairment;

203 (3) The surviving corporation or other business entity has all
204 liabilities of each corporation or other business entity party to the
205 merger;

206 (4) A proceeding pending against any corporation or other business
207 entity party to the merger may be continued as if the merger did not
208 occur or the surviving corporation or other business entity may be
209 substituted in the proceeding for the corporation or other business
210 entity whose existence ceased;

211 (5) The certificate of incorporation or the applicable governance
212 documents of the surviving corporation or other business entity is
213 amended to the extent provided in the plan of merger; and

214 (6) The shares or interests of each corporation or other business
215 entity party to the merger that are to be converted into shares or
216 interests, obligations or other securities of the surviving or any other
217 corporation or other business entity or into cash or other property are
218 converted, and the former holders of the shares or interests are entitled
219 only to the rights provided in the certificate of merger or to their rights
220 under sections 33-855 to 33-872, inclusive.

221 (b) When a share or interest exchange takes effect, the shares or
222 interests of each acquired corporation or other business entity are
223 exchanged as provided in the plan, and the former holders of the
224 shares or interests are entitled only to the exchange rights provided in
225 the certificate of share exchange or to their rights under sections 33-855
226 to 33-872, inclusive.

227 (c) Any holder of an interest in any other business entity that is a
228 party to a merger or share or interest exchange who, prior to the
229 merger or share or interest exchange, was obligated for any of the
230 liabilities or obligations of the other business entity shall not be
231 released by reason of the merger or share or interest exchange from
232 any such liabilities or obligations arising prior to the effective time of
233 the merger or share or interest exchange.

234 Sec. 6. Section 33-821 of the general statutes is repealed and the
235 following is substituted in lieu thereof:

236 (a) One or more foreign corporations or other business entities may
237 merge or enter into a share or interest exchange with one or more
238 domestic corporations or other business entities if:

239 (1) In a merger, the merger is permitted by the law of the state or
240 country under whose law each foreign corporation is incorporated or
241 each other business entity is organized and each foreign corporation or
242 other business entity complies with that law in effecting the merger;

243 (2) In a share or interest exchange, the corporation or other business
244 entity whose shares or interests will be acquired is a domestic
245 corporation or other business entity, whether or not a share or interest
246 exchange is permitted by the law of the state or country under whose
247 law the acquiring corporation is incorporated or the acquiring other
248 business entity is organized;

249 (3) The foreign corporation or other business entity complies with
250 section 33-819, as amended by this act, if it is the surviving corporation
251 or other business entity of the merger or acquiring corporation or other
252 business entity of the share or interest exchange; and

253 (4) Each domestic corporation or other business entity complies
254 with the applicable provisions of sections 33-815 to 33-818, inclusive, as
255 amended by this act, and, if it is the surviving corporation or other
256 business entity of the merger or acquiring corporation or other
257 business entity of the share or interest exchange, with section 33-819, as
258 amended by this act.

259 (b) Upon the merger or share or interest exchange taking effect, the
260 surviving foreign corporation or other business entity of a merger and
261 the acquiring foreign corporation or other business entity of a share or
262 interest exchange is deemed: (1) To appoint the Secretary of the State
263 and [his] the secretary's successors in office as its agent for service of

264 process in a proceeding to enforce any obligation or the rights of
265 dissenting shareholders of each domestic corporation party to the
266 merger or share or interest exchange; and (2) to agree that it will
267 promptly pay to the dissenting shareholders of each domestic
268 corporation party to the merger or share or interest exchange the
269 amount, if any, to which they are entitled under sections 33-855 to 33-
270 872, inclusive.

271 (c) This section does not limit the power of a foreign corporation to
272 acquire all or part of the shares of one or more classes or series of a
273 domestic corporation or other business entity through a voluntary
274 exchange or otherwise.

275 Sec. 7. Section 34-33a of the general statutes is repealed and the
276 following is substituted in lieu thereof:

277 (a) As used in this section and sections 34-33b to 34-33f, inclusive, as
278 amended by this act, (1) "other business entity" means any association
279 or legal entity, other than a domestic or foreign limited partnership,
280 organized to conduct business including, but not limited to,
281 corporations, general partnerships, limited liability partnerships,
282 limited liability companies, joint ventures, joint stock companies and
283 statutory trusts, and (2) "interest or interests" means a beneficial
284 ownership interest in any other business entity.

285 ~~[(a)]~~ (b) Pursuant to a plan of merger, approved in the manner
286 provided by section 34-33c, [a domestic limited partnership] one or
287 more limited partnerships may merge with or into any one or more
288 limited partnerships or any one or more other business entities formed
289 under the laws of this state or any other state or any foreign country or
290 other foreign jurisdiction or any combination thereof, and the plan
291 shall name the surviving or resulting limited partnership or other
292 business entity.

293 ~~[(b)]~~ (c) The plan of merger, which may be embodied in an
294 agreement, shall set forth: (1) The name and jurisdiction of

295 organization of each of the merging limited partnerships and [a
296 designation of which limited partnership] other business entities and
297 the name of the limited partnership or other business entity that is to
298 be the surviving limited partnership or other business entity; (2) the
299 terms and conditions of the merger, including the manner and basis of
300 converting the shares or interests of each party to the merger into
301 shares or interests or obligations of the surviving entity or into cash or
302 other property in whole or in part, and which may include provision
303 for the distribution by any merging limited partnership or by any
304 other limited partnership of cash, securities of any limited partnership
305 or other property in lieu of, in addition to, in exchange for or upon
306 conversion of all or part of the interests in a limited partnership which
307 is not the surviving or resulting limited partnership in the merger; (3)
308 any changes in the certificate of limited partnership of the surviving
309 limited partnership or the governance documents of the surviving
310 other business entity; (4) the effective date or time, which shall be a
311 date or time certain, of the merger if it is not to be effective upon the
312 filing of the certificate of merger; and (5) such other provisions with
313 respect to the merger as are deemed necessary or desirable. If the
314 merger involves one or more other business entities, a written plan of
315 merger that meets the requirements of the statutory authority for
316 merger of such other business entity shall be deemed to meet the
317 requirements of this section.

318 Sec. 8. Section 34-33b of the general statutes is repealed and the
319 following is substituted in lieu thereof:

320 (a) Pursuant to a plan of consolidation, approved in the manner
321 provided by section 34-33c, any domestic limited partnerships may
322 consolidate with any one or more limited partnerships or any one or
323 more other business entities formed under the laws of this state or any
324 other state or any foreign country or other foreign jurisdiction or any
325 combination thereof into a new limited partnership or other business
326 entity.

327 (b) The plan of consolidation, which may be embodied in an
 328 agreement, shall set forth: (1) The name and jurisdiction of
 329 organization of each of the consolidating limited partnerships or other
 330 business entities and the name and jurisdiction of organization of the
 331 new limited partnership or other business entity, which name may be
 332 that of any of the consolidating limited partnerships or other business
 333 entities or any other available name pursuant to this chapter; (2) the
 334 terms and conditions of the consolidation, including the manner and
 335 basis of converting the interests of each limited partnership into shares,
 336 interests, obligations or other securities of the new limited partnership
 337 or other business entity or into cash or other property in whole or in
 338 part, and which may include provision for the distribution by any
 339 consolidating limited partnership of cash, securities of any limited
 340 partnership, or other property in lieu of, in addition to, in exchange for
 341 or upon conversion of all or part of the interests in any consolidating
 342 limited partnership or other business entity or of the new limited
 343 partnership or other business entity; (3) [with respect to the new] if the
 344 surviving entity is a limited partnership, a certificate of limited
 345 partnership complying with section 34-10; (4) the effective date or
 346 time, which shall be a date or time certain, of a consolidation if it is not
 347 to be effective upon the filing of the certificate of consolidation; and (5)
 348 such other provisions with respect to the consolidation as are deemed
 349 necessary or desirable. If the consolidation involves one or more other
 350 business entities, a written plan of consolidation that meets the
 351 requirements of the statutory authority for consolidation of such other
 352 business entity shall be deemed to meet the requirements of this
 353 section.

354 Sec. 9. Section 34-33d of the general statutes is repealed and the
 355 following is substituted in lieu thereof:

356 (a) [Any domestic limited partnership merging or consolidating
 357 under this section] After a plan of merger or consolidation is approved
 358 pursuant to section 34-33c, as amended by this act, the surviving or
 359 new limited partnership or other business entity shall file a certificate

360 of merger or consolidation, as the case may be, in the following
 361 manner: (1) A certificate of merger, executed by [each] any merging
 362 limited partnership which is a party thereto, executed as provided in
 363 section 34-10a, shall be filed as provided in section 34-10b with respect
 364 to the surviving or new limited partnership or other business entity. (2)
 365 A certificate of consolidation by [each] any consolidating limited
 366 partnership which is a party thereto, executed as provided in section
 367 34-10a, shall be filed as provided in section 34-10b in respect of the
 368 new limited partnership or other business entity together with an
 369 appointment of statutory agent for service as provided in section 34-
 370 13b or other applicable law. (3) General partners executing a certificate
 371 of merger or consolidation need not sign or swear as to facts set forth
 372 therein not pertaining to the limited partnership of which they are
 373 general partners.

374 (b) The certificate of merger or consolidation shall set forth, in
 375 addition to the statutory requirements for a certificate of merger or
 376 consolidation for any other business entity that is a party to the
 377 merger: (1) The plan of merger or consolidation; and (2) as to each
 378 merging or consolidating limited partnership, a statement of the vote
 379 of limited partners required to adopt the plan of merger or
 380 consolidation and the vote for the plan; and (3) if the surviving or new
 381 limited partnership is a foreign limited partnership, and is to transact
 382 business in this state, a statement that such surviving or new limited
 383 partnership, if any, shall comply with the provisions of this chapter
 384 respecting such limited partnerships, and in every case a statement
 385 irrevocably appointing the Secretary of the State as its attorney to
 386 accept service of process in any action, suit or proceeding for the
 387 enforcement of any obligations of any domestic merging or
 388 consolidating limited partnership for which it is liable pursuant to
 389 subsection (c) of section 34-33f, as amended by this act, to the plan of
 390 merger or consolidation, or to the laws governing such foreign limited
 391 partnership. If such appointment is not made, legal process in any
 392 such action, suit or proceeding may be served upon the Secretary of
 393 the State as provided in subsection (b) of section 34-38q as attorney for

394 such surviving or new limited partnership.

395 (c) The copy of the certificate of merger or consolidation, certified by
396 the Secretary of the State, may also be filed for record in the records of
397 deeds in the office of the town clerk in any town in this state. For such
398 recording, the town clerk shall charge and collect the same fee as in the
399 case of deeds.

400 (d) A certificate of merger or consolidation shall act as a certificate
401 of cancellation for a domestic limited partnership which is not the
402 surviving or new limited partnership in the merger or consolidation. A
403 certificate of merger shall act as a certificate of amendment for a
404 domestic limited partnership which survives such merger, to the
405 extent provided by the plan of merger. In the case of a consolidation, if
406 the new entity is a limited partnership, the certificate of limited
407 partnership set forth in the certificate of consolidation shall be the
408 certificate of limited partnership of the new limited partnership.

409 Sec. 10. Section 34-33f of the general statutes is repealed and the
410 following is substituted in lieu thereof:

411 (a) The merging limited partnerships or other business entities or
412 consolidating limited partnerships or other business entities party to
413 the plan of merger or consolidation shall be a single limited
414 partnership or other business entity, which, in the case of a merger
415 shall be that limited partnership or other business entity designated in
416 the plan of merger as the surviving limited partnership or other
417 business entity and, in the case of a consolidation shall be the new
418 limited partnership or other business entity provided for in the plan of
419 consolidation.

420 (b) The separate existence of all merging or consolidating limited
421 partnerships or other business entities party to the plan of merger or
422 consolidation, except the surviving or new limited partnership or other
423 business entity, shall cease.

424 (c) For the purposes of the laws of this state, the surviving or new
425 limited partnership or other business entity shall thereupon and
426 thereafter, to the extent consistent with its certificate of limited
427 partnership or other governance documents as in effect upon effecting
428 the merger or consolidation, possess all of the rights, privileges and
429 powers of each of the limited partnerships and other business entities
430 that have merged or consolidated, and all property, real, personal and
431 mixed, and all debts due to any of such limited partnerships and other
432 business entities as well as all other things and choses in action
433 belonging to each of such limited partnerships and other business
434 entities, and all and every other interests, of or belonging to or due to
435 each of the limited partnerships and other business entities so merged
436 or consolidated, shall be taken and transferred to and vested in such
437 single limited partnership or other business entity without further act
438 or deed; and the title to any real estate, or any interest therein, vested
439 in any of such limited partnerships and other business entities shall
440 not revert or be in any way impaired by reason of such merger or
441 consolidation.

442 (d) Any devise, bequest, gift or grant, contained in any will or in
443 any other instrument, made before or after the merger or
444 consolidation, to or for the benefit of any of the merging or
445 consolidating limited partnerships or other business entities shall inure
446 to the benefit of the surviving or new limited partnership or other
447 business entity. So far as is necessary for that purpose, the existence of
448 each merging or consolidating limited partnership or other business
449 entity shall be deemed to continue in and through the surviving or
450 new limited partnership or other business entity.

451 (e) The surviving or new limited partnership or other business
452 entity shall be liable for all the liabilities, obligations and penalties of
453 each of the merging or consolidating limited partnerships and other
454 business entities; and any claim existing or action or proceeding, civil
455 or criminal, pending by or against any such limited partnership or
456 other business entity may be prosecuted as if such merger or

457 consolidation had not taken place, or such surviving or new limited
 458 partnership or other business entity may be substituted in its place;
 459 and any judgment rendered against any of the merging or
 460 consolidating limited partnerships or other business entities may be
 461 enforced against the surviving or new limited partnership or other
 462 business entity. Neither the rights of creditors nor any liens upon the
 463 property of any merging or consolidating limited partnership shall be
 464 impaired by the merger or consolidation.

465 (f) Any general partner of a limited partnership or holder of an
 466 interest in any other business entity that is a party to a merger or
 467 consolidation who, prior to the merger, was obligated for any of the
 468 liabilities or obligations of the limited partnership or other business
 469 entity shall not be released by reason of the merger or consolidation
 470 from any such liabilities or obligations arising prior to the effective
 471 time of the merger or consolidation.

472 Sec. 11. Section 34-388 of the general statutes is repealed and the
 473 following is substituted in lieu thereof:

474 (a) As used in this section and sections 34-389 to 34-391, inclusive, as
 475 amended by this act, (1) "other business entity" means any association
 476 or legal entity, other than a domestic or foreign partnership, organized
 477 to conduct business including, but not limited to, corporations, limited
 478 partnerships, limited liability partnerships, limited liability companies,
 479 joint ventures, joint stock companies and statutory trusts, and (2)
 480 "interest or interests" means a beneficial ownership interest in any
 481 other business entity.

482 [(a)] (b) Pursuant to a plan of merger approved as provided in
 483 subsection [(c)] (d) of this section, [a partnership may be merged with
 484 one or more partnerships or limited partnerships] one or more
 485 partnerships may merge with or into any one or more partnerships or
 486 any one or more other business entities formed or organized under the
 487 laws of this state or any other state or any foreign country or other
 488 foreign jurisdiction or any combination thereof.

489 [(b)] (c) The plan of merger shall set forth:

490 (1) The name of each partnership or [limited partnership] other
491 business entity that is a party to the merger;

492 (2) The name of the surviving entity into which the other
493 partnerships or [limited partnerships] other business entities will
494 merge;

495 (3) Whether the surviving entity is a partnership or [a limited
496 partnership] other business entity and the status of each partner;

497 (4) The terms and conditions of the merger;

498 (5) The manner and basis of converting the shares or interests of
499 each party to the merger into shares or interests or obligations of the
500 surviving entity or into money or other property in whole or part;
501 [and]

502 (6) The street address of the surviving entity's chief executive office;

503 (7) The effective date or time, which shall be a date or time certain,
504 of the merger if it is not to be effective upon the filing of the certificate
505 of merger; and

506 (8) Such other provisions with respect to the merger as are deemed
507 necessary or desirable.

508 [(c)] (d) The plan of merger shall be approved:

509 (1) In the case of a partnership that is a party to the merger, by all of
510 the partners or a number or percentage specified for merger in the
511 partnership agreement; and

512 (2) In the case of a limited partnership that is a party to the merger,
513 by the vote required for approval of a merger by the law of the state or
514 foreign jurisdiction in which the limited partnership is organized and,
515 in the absence of such a specifically applicable law, by all of the

516 partners, notwithstanding a provision to the contrary in the
517 partnership agreement.

518 [(d)] (e) After a plan of merger is approved and before the merger
519 takes effect, the plan may be amended or abandoned as provided in
520 the plan.

521 [(e)] (f) The merger takes effect on the later of:

522 (1) The approval of the plan of merger by all parties to the merger,
523 as provided in subsection [(c)] (d) of this section;

524 (2) The filing of all documents required by law to be filed as a
525 condition to the effectiveness of the merger; or

526 (3) Any effective date specified in the plan of merger.

527 (g) If the merger involves one or more other business entities, a
528 written plan of merger that meets the requirements of the statutory
529 authority for merger for such other business entity shall be deemed to
530 meet the requirements of a plan of merger under this section.

531 Sec. 12. Section 34-389 of the general statutes is repealed and the
532 following is substituted in lieu thereof:

533 (a) When a merger takes effect:

534 (1) The separate existence of every partnership or [limited
535 partnership] other business entity that is a party to the merger, other
536 than the surviving entity, ceases;

537 (2) All property owned by each of the merged partnerships or
538 [limited partnerships] other business entities vests in the surviving
539 entity;

540 (3) All obligations of every partnership or [limited partnership]
541 other business entity that is a party to the merger become the
542 obligations of the surviving entity; and

543 (4) An action or proceeding pending against a partnership or
544 [limited partnership] other business entity that is a party to the merger
545 may be continued as if the merger had not occurred, or the surviving
546 entity may be substituted as a party to the action or proceeding.

547 (b) The Secretary of the State is the agent for service of process in an
548 action or proceeding against a surviving foreign partnership or
549 [limited partnership] other business entity to enforce an obligation of a
550 domestic partnership or [limited partnership] other business entity
551 that is a party to a merger. Upon receipt of process, the Secretary of the
552 State shall mail a copy of the process to the surviving foreign
553 partnership or [limited partnership] other business entity.

554 (c) A partner of the surviving partnership or limited partnership is
555 liable for:

556 (1) All obligations of a party to the merger for which the partner
557 was personally liable before the merger;

558 (2) All other obligations of the surviving entity incurred before the
559 merger by a party to the merger, but those obligations may be satisfied
560 only out of property of the entity; and

561 (3) All obligations of the surviving entity incurred after the merger
562 takes effect, but those obligations may be satisfied only out of property
563 of the entity if the partner is a limited partner.

564 (d) If the obligations incurred before the merger by a party to the
565 merger are not satisfied out of the property of the surviving
566 partnership or limited partnership, the general partners of that party
567 immediately before the effective date of the merger shall contribute the
568 amount necessary to satisfy that party's obligations to the surviving
569 entity, in the manner provided in section 34-378 or in sections 34-9 to
570 34-38r, inclusive, of the jurisdiction in which the party was formed, as
571 the case may be, as if the merged party were dissolved.

572 (e) A partner of a party to a merger between or among partnerships

573 or limited partnerships who does not become a partner of the
574 surviving partnership or limited partnership is dissociated from the
575 entity, of which that partner was a partner, as of the date the merger
576 takes effect. The surviving entity shall cause the partner's interest in
577 the entity to be purchased under section 34-362 or another statute
578 specifically applicable to that partner's interest with respect to a
579 merger. The surviving entity is bound under section 34-363 by an act of
580 a general partner dissociated under this subsection, and the partner is
581 liable under section 34-364 for transactions entered into by the
582 surviving entity after the merger takes effect.

583 (f) Any partner of a partnership or holder of an interest in any other
584 business entity that is a party to a merger who, prior to the merger,
585 was obligated for any of the liabilities or obligations of the partnership
586 or other business entity shall not be released by reason of the merger
587 from any such liabilities or obligations arising prior to the effective
588 time of the merger.

589 Sec. 13. Section 34-390 of the general statutes is repealed and the
590 following is substituted in lieu thereof:

591 (a) After a merger, [the surviving partnership or limited partnership
592 may file a statement that one or more partnerships or limited
593 partnerships have merged into the surviving entity] if the surviving
594 entity is a partnership, the partnership may file a statement that one or
595 more partnerships or other business entities have merged into the
596 surviving partnership.

597 (b) A statement of merger shall contain, in addition to the statutory
598 requirements for a certificate of merger or consolidation for any other
599 business entity that is a party to the merger:

600 (1) The name of each partnership or [limited partnership] other
601 business entity that is a party to the merger;

602 (2) The name of the surviving entity into which the other

603 partnerships or [limited partnership] other business entities were
604 merged;

605 (3) The street address of the surviving entity's chief executive office
606 and of an office in this state, if any; and

607 [(4) Whether the surviving entity is a partnership or a limited
608 partnership.]

609 (4) The type of entity of the surviving entity.

610 (c) Except as otherwise provided in subsection (d) of this section, for
611 the purposes of section 34-323, property of the surviving partnership
612 or [limited partnership] other business entity which before the merger
613 was held in the name of another party to the merger is property held in
614 the name of the surviving entity upon filing a statement of merger.

615 (d) For the purposes of section 34-323, real property of the surviving
616 partnership or [limited partnership] other business entity which before
617 the merger was held in the name of another party to the merger is
618 property held in the name of the surviving entity upon recording a
619 certified copy of the statement of merger in the office for recording
620 transfers of that real property.

621 (e) A filed and, if appropriate, recorded statement of merger,
622 executed and declared to be accurate pursuant to subsection (c) of
623 section 34-305, stating the name of a partnership or [limited
624 partnership] other business entity that is a party to the merger in
625 whose name property was held before the merger and the name of the
626 surviving entity, but not containing all of the other information
627 required by subsection (b) of this section, operates with respect to the
628 partnerships or [limited partnerships] other business entities named to
629 the extent provided in subsections (c) and (d) of this section.

630 Sec. 14. Section 33-182i of the general statutes is repealed and the
631 following is substituted in lieu thereof:

Chapter 601 is applicable to a corporation organized pursuant to this chapter except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions of said chapter 601, in which event the provisions of this chapter shall take precedence with respect to a corporation organized pursuant to the provisions of this chapter. A professional corporation organized under this chapter shall consolidate or merge only with another domestic professional corporation organized under this chapter, a domestic limited liability company organized under sections 34-100 to 34-242, inclusive, as amended by this act, or a general partnership or limited liability partnership organized under sections 34-300 to 34-434, inclusive, as amended by this act, to render the same specific professional service and a merger or consolidation with any foreign corporation or foreign limited liability company or limited liability partnership is prohibited.

Sec. 15. Section 34-193 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) As used in this section and sections 34-194 to 34-198, inclusive, as amended by this act, "other business entity" means a corporation or a business trust or association, real estate investment trust, common law trust, general partnership, limited partnership, limited liability partnership, foreign limited liability company or any other unincorporated business.

~~[(a)]~~ (b) Except as provided in subsection ~~[(b)]~~ (c) of this section, any one or more limited liability companies may merge or consolidate with or into any one or more limited liability companies or one or more other business entities formed or organized under the laws of this state or any other state or any foreign country or other foreign jurisdiction or any combination thereof in a manner provided in sections 34-194 and 34-195, as amended by this act.

~~[(b)]~~ (c) A limited liability company formed under sections 34-100 to 34-242, inclusive, as amended by this act, to render professional

664 services shall merge or consolidate only with another domestic limited
665 liability company formed under said sections to render the same
666 professional service, and a merger or consolidation with any foreign
667 limited liability company is prohibited.

668 Sec. 16. Section 34-194 of the general statutes is repealed and the
669 following is substituted in lieu thereof:

670 (a) Unless otherwise provided in the articles of organization or the
671 operating agreement, a proposed plan of merger or consolidation
672 complying with the requirements of section 34-195, as amended by this
673 act, shall be authorized and approved by each limited liability
674 company that is a party to a proposed merger or consolidation by the
675 affirmative vote of at least two-thirds in interest of the members.

676 (b) After a merger or consolidation is authorized and approved,
677 unless the plan of merger or consolidation provides otherwise, and at
678 any time before articles of merger or consolidation as provided for in
679 section 34-196, as amended by this act, are filed, the plan of merger or
680 consolidation may be abandoned, subject to any contractual rights, in
681 accordance with the procedure set forth in the plan of merger or
682 consolidation or, if none is set forth, by the unanimous consent of the
683 members of each limited liability company that is a party to the merger
684 or consolidation, unless the operating agreement of any such limited
685 liability company provides otherwise.

686 Sec. 17. Section 34-195 of the general statutes is repealed and the
687 following is substituted in lieu thereof:

688 (a) Each limited liability company that is a party to a proposed
689 merger or consolidation shall enter into a written plan of merger or
690 consolidation, which shall be approved in accordance with section 34-
691 194, as amended by this act.

692 (b) The plan of merger or consolidation shall set forth: (1) The name
693 of each limited liability company and any other business entity in the

694 merger or consolidation and the name of the surviving limited liability
 695 company or other business entity in a merger or the new limited
 696 liability company or other business entity in a consolidation; (2) the
 697 terms and conditions of the proposed merger or consolidation; (3) the
 698 manner and basis of converting the interests in each limited liability
 699 company or other business entity in the merger or consolidation into
 700 interests of the surviving or new limited liability company or other
 701 business entity or, in whole or in part, into cash or other property; (4)
 702 in the case of a merger, such amendments to the articles of
 703 organization of [the] any surviving limited liability company as are
 704 desired to be effected by the merger, or that no such changes are
 705 desired; (5) in the case of a consolidation, all of the statements required
 706 to be set forth in the articles of organization of any new limited liability
 707 company; and (6) such other provisions relating to the proposed
 708 merger or consolidation as are deemed necessary or desirable. If the
 709 merger or consolidation involves a corporation, a written plan that
 710 meets the requirements of section 33-815, as amended by this act, shall
 711 be deemed to meet the requirements of a plan of merger or
 712 consolidation under this section.

713 Sec. 18. Section 34-196 of the general statutes is repealed and the
 714 following is substituted in lieu thereof:

715 (a) After a plan of merger or consolidation is approved as provided
 716 in section 34-194, as amended by this act, the surviving or new limited
 717 liability company or other business entity surviving or resulting in or
 718 from the merger or consolidation shall deliver to the Secretary of the
 719 State for filing articles of merger or consolidation duly executed by
 720 [each] any limited liability company which is a party thereto setting
 721 forth: (1) The name and jurisdiction of formation or organization of
 722 each limited liability company and other business entity; (2) the
 723 effective date of the merger or consolidation if later than the date of
 724 filing of the articles of merger or consolidation; (3) the name of the
 725 surviving limited liability company, [or] new limited liability company
 726 or other business entity; (4) a statement that the plan of merger or

727 consolidation was duly authorized and approved by [each] any limited
728 liability company in accordance with the provisions of section 34-194,
729 as amended by this act, and the applicable governing provisions of
730 each other business entity; (5) that the plan of merger or consolidation
731 is on file at a place of business of the surviving or new limited liability
732 company or other business entity and the address thereof; and (6) that
733 a copy of the plan of merger or consolidation will be furnished by the
734 surviving or new limited liability company or other business entity, on
735 request and without cost, to any person holding an interest in any
736 limited liability company that is a party to the merger or consolidation.

737 (b) A merger or consolidation takes effect upon the later of the
738 effective date of the filing of the articles of merger or consolidation or
739 the date set forth in the plan of merger or consolidation.

740 (c) The articles of merger or consolidation shall be executed by a
741 limited liability company that is a party to the merger or consolidation
742 in the manner provided for in section 34-109, and shall be filed with
743 the Secretary of the State in the manner provided for in section 34-110.

744 (d) Articles of merger or consolidation shall act as articles of
745 dissolution for a limited liability company which is not the surviving
746 or new limited liability company in the merger or consolidation.

747 (e) A plan of merger or consolidation authorized and approved in
748 accordance with section 34-194, as amended by this act, may effect any
749 amendment to the operating agreement or effect the adoption of a new
750 operating agreement for a limited liability company if it is the
751 surviving or new limited liability company in the merger or
752 consolidation. Such a plan of merger or consolidation may also
753 provide that the operating agreement of any limited liability company
754 that is a party to the merger or consolidation, including a limited
755 liability company formed for the purpose of consummating a merger
756 or consolidation, shall be the operating agreement of the surviving or
757 new limited liability company. Any amendment to an operating
758 agreement or adoption of a new operating agreement made pursuant

759 to this subsection shall be effective at the effective time or date of the
760 merger or consolidation. The provisions of this subsection shall not be
761 construed to limit the accomplishment of a merger or consolidation or
762 of any of the matters referred to herein by any other means provided
763 for in an operating agreement or other agreement or as otherwise
764 permitted by law.

765 Sec. 19. Section 34-197 of the general statutes is repealed and the
766 following is substituted in lieu thereof:

767 Upon the effectiveness of a merger or consolidation:

768 (1) The limited liability companies party to the plan of merger or
769 consolidation shall be a single limited liability company which, in the
770 case of a merger, shall be the limited liability company designated in
771 the plan of merger as the surviving limited liability company and, in
772 the case of a consolidation, shall be the new limited liability company
773 provided for in the plan of consolidation.

774 (2) The separate existence of each limited liability company or other
775 business entity that is a party to the plan of merger or consolidation,
776 except the surviving or new limited liability company, shall cease.

777 (3) [The] Any surviving or new limited liability company shall
778 thereupon and thereafter possess all the rights, privileges, immunities
779 and powers of each of the merging or consolidating limited liability
780 companies and is subject to all the restrictions, disabilities and duties
781 of each of the merging or consolidating limited liability companies.

782 (4) [All] Any property, real, personal and mixed, and all debts due
783 on whatever account, including promises to make capital
784 contributions, and all other choses in action, and all and every other
785 interest of or belonging to or due to each of the limited liability
786 companies shall be vested in the surviving or new limited liability
787 company or other business entity without further act or deed.

788 (5) The title to all real estate, and any interest therein, vested in any

789 such limited liability company shall not revert or be in any way
790 impaired by reason of such merger or consolidation.

791 (6) [The] Any surviving or new limited liability company or other
792 business entity shall be responsible and liable for all liabilities and
793 obligations of each of the limited liability companies or other business
794 entities that were merged or consolidated, and any claim existing or
795 action or proceeding pending by or against any limited liability
796 company that was a party to the merger or consolidation may be
797 prosecuted as if such merger or consolidation had not taken place, or
798 the surviving or new limited liability company or other business entity
799 may be substituted in the action.

800 (7) Neither the rights of creditors nor any liens on the property of
801 any limited liability company that is a party to the merger or
802 consolidation shall be impaired by the merger or consolidation.

803 (8) The membership or other interests in a limited liability company
804 that are to be converted or exchanged into interests, cash, obligations
805 or other property under the terms of the plan of merger or
806 consolidation are so converted, and the former holders thereof are
807 entitled only to the rights provided in the plan of merger or
808 consolidation or the rights otherwise provided by law.

809 Sec. 20. Section 34-198 of the general statutes is repealed and the
810 following is substituted in lieu thereof:

811 [(a) Any one or more limited liability companies formed under
812 sections 34-100 to 34-242, inclusive, may merge or consolidate with or
813 into one or more foreign limited liability companies, or any one or
814 more foreign limited liability companies may merge or consolidate
815 with or into any one or more limited liability companies formed under
816 said sections if: (1) The merger or consolidation is permitted by the law
817 of the state or jurisdiction under whose laws each foreign limited
818 liability company is organized or formed and each foreign limited
819 liability company complies with that law in effecting the merger or

820 consolidation; (2) the foreign limited liability company complies with
821 section 34-196 if it is the surviving or new limited liability company;
822 and (3) each domestic limited liability company complies with the
823 applicable provisions of sections 34-193 to 34-195, inclusive, and, if it is
824 the surviving or new limited liability company, with section 34-196.]

825 [(b)] (a) Upon a merger involving one or more domestic limited
826 liability companies taking effect, if the surviving or new limited
827 liability company or other business entity is to be governed by the laws
828 of any state other than this state or by the laws of the District of
829 Columbia or of any foreign country, then the surviving or new limited
830 liability company or other business entity shall agree: (1) That it may
831 be served with process in this state in any proceeding for enforcement
832 of any obligation of any limited liability company party to the merger
833 or consolidation that was formed under the laws of this state, as well
834 as for enforcement of any obligation of the surviving or new limited
835 liability company or other business entity arising from the merger or
836 consolidation; and (2) to irrevocably appoint the Secretary of the State
837 as its agent for service of process in any such proceeding and the
838 surviving or new limited liability company or other business entity
839 shall specify the address to which a copy of the process shall be mailed
840 to it by the Secretary of the State.

841 [(c)] (b) The effect of such merger or consolidation shall be as
842 provided in section 34-197, as amended by this act, if the surviving or
843 new limited liability company is to be a limited liability company
844 governed by the laws of this state. If the surviving or new other
845 business entity is to be governed by the laws of this state, the effect of
846 such merger or consolidation shall be the same as provided in section
847 34-197, as amended by this act, except as the laws of this state
848 governing such other business entity provide otherwise. If the
849 surviving or new [limited liability company] other business entity is to
850 be governed by the laws of any jurisdiction other than this state, the
851 effect of such merger or consolidation shall be the same as provided in
852 section 34-197, as amended by this act, except as the laws of such other

853 jurisdiction provide otherwise.

Statement of Purpose:

To authorize the merger of dissimilar business entities.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]